



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
United States Department of Agriculture – US Forest Service  
FOR  
Grindstone Recreation Area Sewage Treatment Plant  
VPDES Permit No. VA0022993**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the United States Department of Agriculture – US Forest Service, regarding the Grindstone Recreation Area Sewage Treatment Plant located at the Mount Rogers National Recreation Area in the George Washington and Jefferson National Forests, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" or "SWCB" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
6. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. “DMR” means Discharge Monitoring Report.
8. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. “Facility”, “Plant” or “STP” means the Grindstone Recreation Area Sewage Treatment Plant located at the Mount Rogers National Recreation Area, Route 603, 6.5 miles east of Konnarock, Virginia, which treats and discharges treated sewage and other municipal wastes, for the Grindstone Recreation Area.
10. “Forest Service” or “USDA-Forest Service” means the United States Forest Service, a federal agency of the United States Department of Agriculture. The Forest Service is a “person” within the meaning of Va. Code § 62.1-44.3.
11. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
13. “Permit” means VPDES Permit No. VA0022993, which was reissued under the State Water Control Law and the Regulation to the Forest Service on January 5, 2015 and February 1, 2020, and which expires on January 31, 2025.
14. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as

amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9  
VAC 25-31-10.

15. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.
23. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. The Forest Service owns and operates the Plant, which serves the Grindstone Recreation Area. The Permit allows the Forest Service to discharge treated sewage and other municipal wastes from the Plant, to Big Laurel Creek, in strict compliance with the terms and conditions of the Permit.

2. Big Laurel Creek is located in the Tennessee-Big Sandy River Basin, Holston River Subbasin, Section 6, Class VI, Special Standards: None. Big Laurel Creek is listed in DEQ's 305(b)/303(d) Integrated Report as fully supporting. While not listed as impaired, Big Laurel Creek is included in the *E. coli TMDL Development for South Fork Holston River in Smyth and Washington Counties, VA*, approved by the SWCB on June 27, 2017 and by the EPA on August 16, 2016.
3. In submitting its DMRs, as required by the Permit, the Forest Service has indicated that the Facility exceeded effluent limits contained in Parts I.A.1, I.A.2 and I.B. of the Permit, as described in the table below:

Parameter	Observations – DMR Monitoring Period and Relevant Reported Monitoring Results				Permit Limit
	May 2019	July 2019	Sep 2019	Feb 2020	
003 BOD <sub>5</sub> average loading(kg/D)				2.03	1.9
003 BOD <sub>5</sub> average concentration (mg/L)				39.13	30
004 TSS average loading(kg/D)				2.0 <sup>1</sup>	1.9
004 TSS average concentration (mg/L)				38.43	30
007 Dissolved Oxygen concentration minimum (in R/L)	6.0 <sup>1</sup>		6.2 <sup>2</sup>		6.8
157 Total Chlorine Contact minimum concentration (mg/L)				.80 w/10 Ex.3	1.0 w/3 Ex.
312 Ammonia as N Jun-Nov concentration average(mg/L)		11.2 <sup>1</sup>	10.52		8.1
312 Ammonia as N Jun-Nov concentration maximum (mg/L)		11.2 <sup>1</sup>	10.52		8.1

1. On September 6, 2019, SWRO issued WL No. W2019-09-S-1001 regarding this data.
2. On December 5, 2019, SWRO issued NOV No. W2019-12-S-0001 regarding this data & the violations cited in WL No. W2019-09-S-1001.
3. On May 28, 2020, SWRO issued WL No. W2020-05-S-1005 regarding this data.
4. On September 6, 2019, DEQ issued WL No. W2019-09-S-1001 to the Forest Service, citing violations of permitted effluent limits as described in paragraph C(3), violation of Permit requirements for reporting of noncompliance, and failure to submit a complete VPDES permit application to DEQ 180 days prior to (by July 4, 2019) the expiration date of the Permit (January 4, 2020). A complete application for reissuance of the Permit was received by DEQ staff on November 8, 2019.
5. On September 13, 2019, DEQ received initial email correspondence from the Forest Service in response to the September 6, 2019 WL. The response advised that the Facility

operator was to be consulted for an explanation of the sampling parameters cited in the WL.

6. On September 19, 2019, DEQ received follow up email correspondence from the Forest Service in response to the September 6, 2019 WL. The response indicated that the Facility operator attributed the May 2019 and July 2019 violations of permitted effluent limits to inadequate aeration at the Facility. The response stated that the aeration system at the discharge point had been manipulated in order to address the dissolved oxygen content effluent limit violation. The response also stated that an additional aerator had been added to the lagoon in order to address ammonia concentration effluent limit violations, but that the additional aerator may impact parameters for total suspended solids due to loss of a portion of the quiescent zone where settling occurs.
7. On September 23, 2019, DEQ received a partial VPDES permit application for renewal of the Permit. Email correspondence from DEQ permitting staff to the Forest Service, dated September 23, 2019, indicated that a VPDES Reissuance Sewage Sludge Permit Application form would be required in order for the VPDES permit application to be complete.
8. On December 5, 2019, DEQ issued NOV No. W2019-12-S-0001 to the Forest Service, citing violations of permitted effluent limits as described in paragraph C(3). In addition to violations of permitted effluent limits, the December 5, 2019 NOV cited failure to properly operate and maintain facilities and systems of treatment and control due to a leak in the Facility's lower lagoon, utilized for effluent polishing prior to chlorination. The leak was first reported to DEQ by the Forest Service in March 2018. On October 11, 2018, the Forest Service notified DEQ that all needed repairs to the lower lagoon had been completed. On December 11, 2018, the Forest Service notified DEQ that a portion of the repairs had failed. On May 2, 2019, the Forest Service notified DEQ that Facility staff were unable to locate the leak and requested assistance from DEQ. On May 14, 2019, DEQ staff performed a site visit, during which Facility staff advised DEQ that the lower lagoon was being bypassed during Plant operation. Facility staff stated that prior experience in operation of the Plant while bypassing the lower lagoon had not presented consequential impacts to the final effluent quality. DEQ staff were agreeable to operation of the Plant while bypassing the lower lagoon, provided that it did not result in violations of permitted effluent limits. The Facility DMRs for May, July and September 2019, submitted to DEQ by the Forest Service, each reported parameters that violated the permitted effluent limits.
9. The December 5, 2019 NOV also cited failure to submit a complete VPDES permit application to DEQ 180 days prior to (by July 4, 2019) the expiration date of the Permit (January 4, 2020) and acknowledged receipt of the partial VPDES permit application from the Forest Service, received by DEQ on September 23, 2019. Email correspondence from DEQ permitting staff to DEQ compliance staff, dated November 21, 2019, indicated that the VPDES permit application was deemed to be complete as of

November 8, 2019. The Permit was subsequently reissued, with an effective date of February 1, 2020.

10. On December 17, 2019, DEQ received initial telephone communication from the Forest Service in response to the December 5, 2019 NOV. The response advised that the Facility operator was to be consulted in order to identify actions that were being taken to address the cited violations. Forest Service staff stated it was understood that a contractor had been scheduled to repair the leak in the lower lagoon during January 2020, but would need to confirm that this was the case. Forest Service staff also indicated that a follow up written response would be provided to DEQ.
11. On December 18, 2019, DEQ received email correspondence from the Forest Service in response to the December 5, 2019 NOV. The response indicated that the Facility operator believed the violations of permitted effluent limits were due to very warm air temperatures and low volume in the upper lagoon at the time of the discharge. Facility staff discharged the upper lagoon during this period in order to create capacity for pumping of the lower lagoon contents into the upper lagoon. The contents of the lower lagoon were to be pumped to the upper lagoon in order to facilitate inspection of the lower lagoon so that the leak could be located and a plan for repair could be developed. The Forest Service stated that, at the time of the response, the leak in the lower lagoon had been identified, a repair approach had been developed and it was expected that the repair would be completed and the lower lagoon placed back into service prior to the Grindstone Recreation Area reopening for the 2020 camping season.
12. On April 27, 2020, DEQ contacted the Forest Service via email to request an update regarding the status of repairs at the Facility.
13. On April 28, 2020, DEQ received email correspondence from the Forest Service advising that the Grindstone Recreation Area and all associated facilities had been shut down due to COVID-19 and that reopening of the recreation area in 2020 was uncertain. The response stated that the STP would be in full working order, with all repairs completed, prior to reopening of the recreation area.
14. On May 28, 2020, DEQ issued WL No. W2020-05-S-1005 to the Forest Service, citing violations of permitted effluent limits as described in paragraph C(3). In addition to violations of permitted effluent limits, the WL cited violation of the Permit requirement to report all instances of noncompliance not reported under Parts II.I.1 or 2 of the Permit, in writing, at the time the next monitoring reports are submitted.
15. On June 5, 2020, DEQ received email correspondence from the Forest Service in response to the May 28, 2020 WL. The response stated that the Facility operators had been making minor repairs and improvements to the STP and that the leak in the lower lagoon had been scheduled for repair early the next week. The response advised that the Facility operators were working to address the cited violations of permitted effluent limits by reducing algae and vegetation in the lagoon system through chemical treatments and

installation of additional surface aerators and by monitoring and adjusting chlorine dosing. Forest Service staff stated that the Grindstone Recreation Area would not be opened to the public prior to reestablishment of proper Plant operation.

16. On June 16, 2020, DEQ staff performed a site visit to the Facility. During the site visit, DEQ staff observed that the lower lagoon was nearly empty with no obvious evidence of repairs being performed since the previous site visit by DEQ staff on May 14, 2019. DEQ staff also observed that the Grindstone Recreation Area was staffed and open to the public, with occupied campsites.
17. On June 23, 2020, DEQ contacted the Forest Service via email to request an update regarding completed repairs and the operational status of the Facility. The Forest Service provided an email response on the same date. The response stated that the leak had been identified and repaired, but that the repair had not yet been tested under a working load due to the fact that there were no plans to discharge into the lower lagoon until fall of 2020.
18. On June 24, 2020, DEQ received email correspondence from the Forest Service as a follow up to the June 23, 2020 email. The correspondence summarized repair efforts to date and advised that an inspection of the Facility conducted the previous afternoon revealed that the lower lagoon had not retained the most recent rainfall due to a leak at the bottom of the pond. The correspondence stated that there would be no discharges to the lower lagoon until it had been made fully functional and that repairs were to be completed within two weeks from the date of the correspondence. The correspondence also advised that the Forest Service planned to fund a feasibility study during the current calendar year for installation of a septic/leach field system and that there were plans to replace the lagoon system as soon as practical.
19. The Permit, at Part I, Sections A and B, sets forth the final effluent parameter permit limits.
20. The Permit, at Part II, Section I, states, in part: "The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health...3. The permittee shall report all instances of noncompliance not reported under Parts II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2."
21. The Permit, at Part II, Section M, states, in part: "If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board."
22. The Regulation, at 9 VAC 25-31-100(E) states, in part: "All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration

date of the existing permit, unless permission for a later date has been granted by the board.”

23. The Regulation, at 9 VAC 25-31-100(F) states that the board shall not issue a permit before receiving a complete application for a permit except for VPDES general permits.
24. The Permit, at Part II, Section Q, states, in part: “The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.”
25. Va. Code § 62.1-44.5 states that “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
26. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
27. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
28. The Department has issued no permits or certificates to the Forest Service for discharge from the STP other than VPDES Permit No. VA0022993.
29. Big Laurel Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
30. Based on the monthly DMRs submitted to DEQ by the Forest Service, the correspondence received by DEQ from the Forest Service on September 13, 2019, September 19, 2019, December 18, 2019, April 28, 2020, June 5, 2020, June 23, 2020 and June 24, 2020, and the DEQ site visits to the Facility on May 14, 2019 and June 16, 2020, the Board concludes that the Forest Service has violated the Permit, Va. Code § 62.1-44.5 and the Regulation 9 VAC 25-31-50, by discharging treated and partially treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(18), above.
31. In order for the Forest Service to complete its return to compliance, DEQ staff and representatives of the Forest Service have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the United States Department of Agriculture – US Forest Service and the United States



Department of Agriculture – US Forest Service agrees to perform the actions described in Appendix A of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of the Forest Service for good cause shown by the Forest Service, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order, in WL No. W2019-09-S-1001 dated September 6, 2019, in NOV No. W2019-12-S-0001 dated December 5, 2019, and in WL No. W2020-05-S-1005 dated May 28, 2020. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Forest Service admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Forest Service acknowledges that any civil action taken by the Board to enforce the terms of this Order will be in the Circuit Court of the City of Richmond. The Forest Service does not waive any rights it may have to seek removal of such action to federal court pursuant to 28 U.S.C. § 1441 *et seq.*
5. The Forest Service declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the Forest Service to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. The Forest Service shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Forest Service shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Forest Service shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Forest Service. Nevertheless, the Forest Service agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after the Forest Service has completed all of the requirements of the Order;
  - b. the Forest Service petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Forest Service.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Forest Service from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

In accordance with the Federal Anti-Deficiency Act, the obligations of the Forest Service under this section are expressly conditioned on the availability of Congressional appropriations, which the Forest Service agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, the Forest Service will promptly inform the DEQ Regional Director. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with the Forest Service's consent or in accordance with the Administrative Process Act.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Forest Service and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the Forest Service certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Forest Service to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Forest Service.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the Forest Service voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 13<sup>th</sup> day of January, 2021.

  
Jeffrey L. Hurst, Regional Director  
Department of Environmental Quality

The United States Department of Agriculture – US Forest Service voluntarily agrees to the issuance of this Order.

Date: 10/20/2020 By: [Signature] FOREST SUPERVISOR  
(Person) (Title)  
United States Department of Agriculture – US Forest Service

Commonwealth of Virginia  
City/County of ROANOKE

The foregoing document was signed and acknowledged before me this 20<sup>th</sup> day of  
October, 2020, by Joby P. Timm who is  
GW Jeff Forest Supervisor of the United States Department of Agriculture – US Forest  
Service, on behalf of the agency.

[Signature]  
Notary Public

340658  
Registration No.

My commission expires: MAR 31, 2023

Notary seal:

3/3/23

## APPENDIX A SCHEDULE OF COMPLIANCE

The United States Department of Agriculture – US Forest Service:

1. Develop a plan of action to ensure that reporting of noncompliance is submitted to DEQ in accordance with the requirements of the Permit.....  
.....within 30 days of the effective date of this Order.
2. Complete all required repairs to the Plant's lower lagoon.....  
.....within 60 days of the effective date of this Order.
3. Reestablish the unit process associated with the lower lagoon in order to restore the full treatment capacity of the Plant, and provide effluent quality meeting all limits set forth in the Permit.....within 90 days of the effective date of this Order.
4. Complete a feasibility study for more efficient wastewater treatment system options to replace the lagoon system.....within 210 days of the date of this Order.
5. Notify DEQ in writing within ten days of completion of each of the above items.
6. Unless otherwise specified in this Order, the United States Department of Agriculture – US Forest Service shall submit all requirements of Appendix A of this Order to:

Ruby Scott  
Compliance Auditor  
VA DEQ – Southwest Regional Office  
355-A Deadmore Street  
Abingdon, Virginia 24210  
Phone: (276) 676-4882  
Fax: (276) 676-4899  
[ruby.scott@deq.virginia.gov](mailto:ruby.scott@deq.virginia.gov)